

Statement of Basis
Briefing Memorandum

Permit No.: MN-0064637-2 (REISSUANCE)

Application No.: MN-0064637-2

**Name and Address of Applicant:
Where Discharge Occurs:**

ML Wastewater Management, Inc.
Mille Lacs Band of Ojibwe
43282 Timber Trail Road
Onamia, Minnesota 56359

Name and Address of Facility

Mille Lacs WWTF
Mille Lacs Indian Reservation
Vineland, Minnesota
Mille Lacs County
(NE1/4 of the SW1/4 of Sec 30, T43N, R27W)

Receiving Water: Wetland to Ogechie Lake

DESCRIPTION OF APPLICANT'S FACILITY AND DISCHARGE

The above named applicant has applied for an NPDES Permit to discharge into the designated receiving water. The permit will be issued by the U.S. Environmental Protection Agency. EPA is the appropriate NPDES permitting authority for the trust parcel upon which the wastewater treatment plant is built and upon which the discharge from this wastewater treatment plant is located. The land which has been placed into trust status land is an L-shaped tract described as follows: The East Half of the Southwest Quarter (E1/2 SW1/4) and the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4), Section 30, Township 43, Range 27 W, in Mille Lacs County.

The Supreme Court has held in a variety of contexts that tribal trust lands are reservations whether or not they are part of a formally established reservation. Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 511(1991); United States v. John, 437 U.S. 634, 649 ((1978) (finding no apparent reason" why lands held in trust should not be considered reservations under §1151(a)). This interpretation has been upheld recently in the environmental context in Arizona Pub. Service Co. v. U.S. Environmental Protection Agency, 211 F.3d 1280 (D.C. Cir. 2000) where the court upheld EPA's regulations governing the authority of Indian tribes to carry out certain provisions of the Clean Air Act.

The applicant's treatment facility consists of primary treatment with static screen and grit removal, followed by biological treatment using sequencing batch reactors. Phosphorus removal is accomplished by chemical addition and equalization. The wastewater goes through ultraviolet disinfection then is discharged to a wetland followed by an unnamed tributary which flows to Ogechie Lake. Sludge is treated by aerobic digestion and gravity thickening. Ultimate sludge use or disposal is by land application or hauling to another POTW.

The facility is to treat an average wet weather flow of 0.625 million gallons per day of mostly domestic wastewater. This facility is a regional facility that treats wastewater from the Vineland Indian Community area and the Garrison Kathio West Mille Lacs Lake Sanitary District. The Sanitary District includes the City of Garrison and the Townships of Garrison and Kathio.

The draft permit requires the applicant to meet the following effluent limitations:

<u>Parameter</u>	<u>30-day average</u>	<u>Basis</u>
CBOD ₅	25 mg/L	40 CFR 133
Total Suspended Solids	30 mg/L	40 CFR 133
pH	6 S.U. (minimum) 9 S.U. (maximum)	40 CFR 133
E. Coli (March-October)	126 E. coli/100 ml (geometric mean)	Public health protection
Total Phosphorus (as P)	1.0 mg/L	Nutrient control

Basis for limits: The limits were developed to ensure compliance with 40 CFR Part 133, protection of human health and EPA's water quality criteria, and protection of Minnesota water quality standards where they are applicable. EPA is moving in the direction of using E. coli, which is a better indicator of recreational suitability, instead of fecal coliform. The 30-day average limit for E. coli, based on EPA's water quality criteria, is 126 E. coli/100 ml. Since the permittee is using UV disinfection, the permittee should be able to comply with the new limit and does not need a compliance schedule. Except for E. coli, the limits are the same as the previous permit. EPA believes these limits are still appropriate as applicable standards have not changed. The permit also requires regular monitoring for Ammonia Nitrogen (NH₃-N), Dissolved Oxygen, and mercury. During the previous permit term, the effluent quality has been consistently below the permit limits.

EPA is the appropriate authority for purposes of certifying the proposed discharge under Section 401 of the Clean Water Act. Clean Water Act Section 401 certification is not needed from the state or the tribe as neither has water quality standards applicable to the receiving water at the point of discharge.

Loading limits in the permit were calculated using the following formula based on the average wet weather flow:

$$0.625 \text{ mgd} \times \text{limit (mg/L)} \times 3.78 = \text{Loading (kg/d)}.$$

Special Conditions

- The treatment shall be operated by a certified wastewater treatment operator.
- The permit also requires monitoring of the effects of the discharge on the receiving water. The permittee is required to continue implementation of the wetland protection/monitoring plan submitted during the previous permit term. The monitoring will help verify that water quality is being maintained. To date, the wetland monitoring has shown that the discharge has had no significant impact on the wetland and Ogechie Lake.
- Additional monitoring as required for discharges with a design flow greater than 0.1 MGD. This monitoring is an application requirement of 40 CFR 122.21(j).
- A one time priority pollutant scan is required.
- The permit contains Industrial Waste Pretreatment Program requirements in accordance with

40 CFR Parts 122 and 403.

- Compliance with 40 CFR Part 503 (sludge use and disposal regulations)(Part III of the permit) if sludge is used or disposed within the Reservation. Part III was developed using the Part 503 Implementation Guidance for sludge and 40 CFR Parts 122, 501, and 503. Compliance with Minnesota rules and regulations, if land applied outside the boundaries of the Reservation. It is expected, however, that sludge will not be land applied during this permit term. The permittee plans on hauling its sludge to another POTW to be used or disposed.
- If the permittee wishes to land apply at sites not identified in this permit prior to the expiration date of this permit, the permittee shall submit a request to the Chief of the NPDES Programs Branch containing the information listed in 1 through 5 below. Upon receipt of the information, the permit may be modified with public notice.
 1. Certification that the application contractor has received all necessary information to comply with applicable provisions of 40 CFR Part 503;
 2. Site information including:
 - Site location by latitude and longitude, and code number to identify field or field portion.
 - Plat map showing location of the site relative to local landmarks.
 - Proximity to surface waters of the United States.
 - Potential presence of endangered species.
 - Soil fertility test with fertilizer recommendations.
 - Previous crop and future crop with yield goal.
 - Participation Agreement signed by the landowner or operator, if different, of the site to receive sludge.
 - Determination whether the site has previously been used for sewage sludge applications.
 - If previously used, determination of cumulative pollutant loading rate since July 19, 1993;
 3. Certification that the local township supervisor has been notified that a site has been identified and is intended for use;
 4. Certification that the County Health Department has been notified that hauling is scheduled to take place; and
 5. Certification that notice has been provided to landowners and occupants adjacent to, or abutting the proposed land application site. Such notice shall be

accomplished by one of the following: written notice through the regular mail; public notice in the local newspaper; public reading of notice at open local public meeting.

ESA and NHPA Compliance

EPA believes it has satisfied its requirements under the Endangered Species Act and the National Historical Preservation Act. Prior to the issuance of the previous permit, a finding of no significant environmental impact was made by EPA and BIA as part of the funding process for the building of the treatment facility. This finding included no impacts to endangered or threatened species or their critical habitat and no impacts to historical, archeological, or cultural resources. Since this is an existing facility with no new planned expansion or construction expected within the permit term, it is believed that the issuance of the permit and the continued operation of the facility and associated discharge will have no effect on endangered or threatened species or their critical habitat and will have no impact on historical, archeological, or cultural resources.

Significant Changes from the Previous Permit

The draft permit contains the following changes from the last issued permit:

1. The draft permit has a limit for E. coli and no longer has a fecal coliform limit for the reason stated above.
2. The draft permit requires routine monitoring for mercury as EPA is trying to identify potential sources of mercury. In addition, the draft permit requires the development and implementation of a pollutant minimization program for mercury if the monitoring indicates high levels of mercury. It is also consistent with MPCA's "Interim Permitting Strategy for Addressing Mercury in Municipal and Industrial Wastewater Permits".
3. The draft permit requires a one time priority pollutant scan to be conducted and annual monitoring for Total Kjeldahl Nitrogen (TKN), Nitrate plus Nitrite Nitrogen, Oil and Grease, and Total Dissolved Solids (TDS) as a permit application requirement.
4. The frequency of monitoring of routine pollutants has been reduced. Previous data indicates that the facility is operated well and produces an effluent consistently below the permit limits.
5. The Industrial Waste Pretreatment Program language has been updated.
6. The Sewage Sludge language has been updated.
7. Part II, Standard Conditions has been updated.
8. Part IV, Stormwater Conditions related to construction activities, has been removed from the draft permit as construction is no longer occurring at the site.

The permit is based on an NPDES applications dated December 13, 2007, and additional supporting documents found in the Administrative Record.

This permit will be effective for approximately five years from the date of issuance as allowed by regulation.

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